HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION No. 3327 of 2006

Between:

M/s Sachin Enterprises, represented
by its Proprietor Mr.Sachin Khandelwal,
R/o Akola, Maharashtra. .. Petitioner

AND

The Assistant Commercial Tax
Officer, Chittoor District ..Respondent.

Counsel for the Petitioner: Shri Tej Prakash Toshniwal

Counsel for the Respondent: Shri A.V.Krishna Koundinya,
Special standing counsel for
Commercial Taxes.

Dated: February 28, 2006

ORDER:

Per G.S.Singhvi, C.J.

In this petition, the petitioner has prayed for quashing the action of respondent to detain and unload 320 bags of Caustic Soda from vehicle bearing No. TN 28 L 2484. It has also prayed for quashing notices dated February 9, 2006, February 11, 2006 and February 15, 2006 issued by respondent under Section 45 of the Andhra Pradesh Value Added Tax Act, 2005 (for short 'the Act').

The petitioner is engaged in the business of different types of chemicals. It is registered under the Bombay Sales Tax Act, 1959, which is said to have been repealed and replaced by Maharastra Value Added Tax Act, 2005. The

petitioner is said to have purchased Caustic Soda from M/s.DCW Limited, Sahupuram, Thootaukudi District, Tamilnadu on 8-2-2006 for a sum of Rs.2,80,656/- and engaged vehicle bearing No.TN 28L 2484 for transportation of Caustic Soda to Akola (Maharastra). According to the petitioner, the vehicle was intercepted on 9-2-2006 by the respondent at Commercial Taxes Check Post near Palamaner, Chittoor District. On that very day, notice under Section 45 (6) of the Act was issued. The petitioner is said to have filed reply on 10-2-2006 and prayed for release of goods by contending that it had not violated the provisions of the Act. The petitioner's grievance is that instead of releasing the goods, the respondent issued notice dated 11-2-2006 for confiscation of goods under Section 45 (7) (b) of the Act necessitating filing of the writ petition.

On February 24, 2006 the Court had, after hearing learned counsel for the parties, passed the following order:

> "At the commencement of hearing, we enquired from the learned Government Pleader as to why representation made by the petitioner on 10-2-2006 has not been decided so far. In reply, the learned Government Pleader gave out that the matter was fixed for hearing on 17-2-2006 but the representative of the petitioner did not make any submissions.
>
> Learned counsel for the petitioner says that his clients representative had appeared before the Assistant Commercial Tax Officer on 17-2-2006 and waited for five hours and had also made submissions.
>
> In view of the above, we direct the Assistant Commercial Tax Officer to dispose of the representation of the petitioner on or before 27-2-2006 and a copy of the order be produced before the Court on 28-2-2006."

In compliance of the direction given by the Court, the respondent has passed order dated February 27, 2006 vide which he confiscated the goods by invoking the provisions of Section 45 (7) (b) of the Act. A copy of that order has been produced before the Court by the learned Government Pleader. The same is

taken on record.

Learned counsel for the petitioner argued that even though his client can avail the remedy of appeal under Section 31 of the Act, in the peculiar facts of the case, this Court should entertain its prayer and order release of the goods, because the same were accompanied by all the required documents. He submitted that order dated February 27, 2006 passed by the respondent is culmination of the series of actions taken by the officer concerned for harassing the petitioner who belongs to the State of Maharashtra.

Learned Government Pleader for Commercial Taxes submitted that the writ petition should be dismissed, because an effective alternative remedy of appeal is available to the petitioner under Section 31 of the Act. He pointed out that sub-section (3) of Section 31 empowers the appellate authority to pass appropriate stay order and, therefore, the remedy of appeal cannot be treated as onerous or ineffective.

We have considered the respective submissions and agree with the learned Government Pleader that this is not a fit case for exercise of power by this Court under Article 226 of the Constitution of India ignoring the availability of statutory alternative remedy of appeal under Section 31 of the Act. Admittedly, the action for detaining the goods along with the vehicle and order for confiscation has been passed under the Act, which also provides for remedy of appeal.

The Supreme Court has consistently held that the High Court should be extremely slow in exercising its jurisdiction under Article 226 of the Constitution, if an effective alternative remedy is available to the petitioner. This Rule has been applied with greater rigor in cases involving recovery of public revenue in the form of Tax, Fee and Cess etc.

I n **Titaghur Paper Mills Co. Ltd. V. State of Orissa** the Supreme Court considered the issue relating to entertainability of writ petition in matters involving recovery of tax etc, and held:

> “Where a right or liability is created by a statute which gives a

special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226."

The same view was reiterated in **State of Goa v. Leukoplast (India) Ltd**. In **Assistant Collector, Central Excise v. Dunlop India Ltd.**, the Supreme Court deprecated the practice of the High Courts' entertaining writ petitions under Article 226 of the Constitution of India and granting stay of the recovery of tax etc., without adverting to the issue of availability of alternative remedy.

By applying the ratio of the aforementioned decisions to the case in hand, we hold that the writ petition is liable to be dismissed because an affective alternative remedy is available to the petitioner by way of appeal under Section 31 of the Act and there is no extra-ordinary reason for making a departure from the rule of alternative remedy.

With the above observation, writ petition is dismissed leaving the petitioner free to avail the remedy of appeal against order dated February 27, 2006.

As a sequel to the dismissal of the writ petition, W.P.M.P.No. 4140 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

February 28, 2006

G.BHAVANI PRASAD, J

GRR / svs